

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

Sharmarke Y. Abdi.,  Appellant,  v.  Hennepin County,  Appellee.	Appeal No. 24-1393 District Court No. 23-cv-01275-WMW
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**Appellee's Motion to Strike**

PLEASE TAKE NOTICE that the Defendant-Appellee Hennepin County ("County"), by and through their attorney of record respectfully requests this Court for an order striking from Plaintiff-Appellant Sharmarke Abdi's ("Abdi") Notice of Appeal any attached exhibits. *See* R. Doc. 37, 1-3. R. Doc. 37-1, 1-12. In addition, the County requests any references to these records in Abdi's opening brief be stricken from the record along with the argument these documents intend to support. App. Br. 12. 16.

**INTRODUCTION**

On February 22, 2024, Abdi submitted a Notice of Appeal to the Eighth Circuit. R. Doc. 37, 1-3. Attached to the Notice of Appeal were several documents

that were not before the District Court for consideration. R. Doc. 37-1, 1-12. The County moves to strike the attached exhibits from Abdi's Notice of Appeal. In violation of the rules governing appellate procedure, Abdi's Notice of Appeal includes attached exhibits that were not part of the district court's record in this case and which were submitted for the first time in the notice of appeal.

### **ARGUMENT**

It is fundamental to appellate practice that the record on appeal includes the following items: 1) the original papers and exhibits filed in the district court; 2) the transcript of the proceedings; and 3) a certified copy of the docket entries prepared by the district clerk. FED. R. APP. P. 10(a). The record on appeal consists "only of evidence presented to the district court." *See Rivers-Frison v. Southeast Mo. Community Treatment Ctr.*, 133 F.3d 616, 691 n. 2 (8th Cir.1998). It is well settled that "documents presented for the first time at the appellate stage of any proceeding are generally not considered part of the record for the review by the appellate court." *Huelsman v. Civic Ctr. Corp.*, 873 F.2d 1171, 1175 (8th Cir.1989); *see also Delrosa v. Sullivan*, 922 F.2d 480, 483–84 (8th Cir.1991) (refusing to consider new evidence submitted on appeal); *Clay v. Massanari*, 6 Fed. Appx. 523, 524 (8th Cir. 2001) (refusing to consider new documents submitted with notice of appeal).

The documents attached to Abdi's Notice of Appeal were not before the district court for consideration and they were presented for the first time when he filed this appeal.

## CONCLUSION

For all of the above reasons, this Court should issue an order striking the improper exhibits, any references to them in the notice of appeal, and related portions of Abdi's opening brief and the arguments these documents support.

Dated: July 9, 2024

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## CERTIFICATE OF COMPLIANCE

I certify that Appellee's Motion to Strike complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 404 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(f). This Motion to Strike is proportionally spaced and has a typeface of 14 point Times New Roman font.

Dated: July 9, 2024

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## **CERTIFICATE OF SERVICE**

I hereby certify that on July 9, 2024, I electronically filed the foregoing MOTION TO STRIKE with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

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